

104TH CONGRESS  
2D SESSION

# S. 2004

To modify certain provisions of the Health Care Quality Improvement Act  
of 1986.

---

## IN THE SENATE OF THE UNITED STATES

JULY 31, 1996

Mr. WYDEN (for himself, Ms. SNOWE, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

## A BILL

To modify certain provisions of the Health Care Quality  
Improvement Act of 1986.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Health Care Quality  
5       Improvement Act Amendments of 1996”.

6       **SEC. 2. STANDARDS FOR PROFESSIONAL REVIEW ACTIONS.**

7       Section 412(a) of the Health Care Quality Improve-  
8       ment Act of 1986 (42 U.S.C. 11112(a)) is amended in  
9       the matter after and below paragraph (4) by adding at  
10      the end the following sentences: “A motion for a summary

---

1 judgment that such standards have been met shall be  
 2 granted unless, considering the evidence in the light most  
 3 favorable to the opposing party, a reasonable finder of fact  
 4 could conclude that the presumption has been so rebutted.  
 5 The decision on such a motion may be appealed as of  
 6 right, without regard to whether the motion is granted or  
 7 denied, and the courts of appeals (other than the United  
 8 States Court of Appeals for the Federal Circuit) have ju-  
 9 risdiction of appeals from such decisions of the district  
 10 courts.”.

11 **SEC. 3. REQUIRING REPORTS ON MEDICAL MALPRACTICE**

12 **DATA.**

13 (a) IN GENERAL.—Section 421 of the Health Care  
 14 Quality Improvement Act of 1986 (42 U.S.C. 11131) is  
 15 amended—

16 (1) by striking subsections (a) and (b);

17 (2) by redesignating subsections (c) and (d) as  
 18 subsections (d) and (e), respectively; and

19 (3) by inserting before subsection (d) (as so re-  
 20 designated) the following subsections:

21 “(a) IN GENERAL.—

22 “(1) REQUIREMENT OF REPORTING.—Subject  
 23 to the subsequent provisions of this subsection, each  
 24 person or entity which makes payment under a pol-  
 25 icy of insurance, self-insurance, or otherwise in set-

1 tlement (or partial settlement) of, or in satisfaction  
2 of a judgment in, a medical malpractice action or  
3 claim shall report, in accordance with section 424,  
4 information respecting the payment and cir-  
5 cumstances thereof.

6 “(2) PAYMENTS BY PRACTITIONERS.—The per-  
7 sons to whom the requirement of paragraph (1) ap-  
8 plies include a physician or other licensed health  
9 care practitioner who makes a payment described in  
10 such paragraph and whose acts or omissions are the  
11 basis of the action or claim involved. The preceding  
12 sentence is subject to paragraph (3).

13 “(3) REFUND OF FEES.—With respect to a  
14 physician or other licensed health care practitioner  
15 whose acts or omissions are the basis of an action  
16 or claim described in paragraph (1), the requirement  
17 of such paragraph shall not apply to a payment de-  
18 scribed in such paragraph if—

19 “(A) the payment is made by the physician  
20 or practitioner as a refund of fees for the health  
21 services involved, and

22 “(B) the payment does not exceed the  
23 amount of the original charge for the health  
24 services.

1 “(4) DEFINITION OF ENTITY AND PERSON.—

2 For purposes of this section, the term ‘entity’ in-  
3 cludes the Federal Government, any State or local  
4 government, and any insurance company or other  
5 private entity; and the term ‘person’ includes Fed-  
6 eral officers and employees.

7 “(b) INFORMATION TO BE REPORTED.—The infor-  
8 mation to be reported under subsection (a) by a person  
9 or entity regarding a payment and an action or claim in-  
10 cludes the following:

11 “(1)(A) The name of each physician or other li-  
12 censed health care practitioner whose acts or omis-  
13 sions were the basis of the action or claim; and (to  
14 the extent authorized under title II of the Social Se-  
15 curity Act) the Social Security account number as-  
16 signed to the physician or practitioner.

17 “(B) The medical field of the physician or prac-  
18 titioner, including as applicable the medical spe-  
19 cialty.

20 “(C) The date on which the physician or practi-  
21 tioner was first licensed in the medical field involved,  
22 and the number of years the physician or practi-  
23 tioner has been practicing in such field.

24 “(D) If the physician or practitioner could not  
25 be identified for purposes of subparagraph (A)—

1           “(i) a statement of such fact and an expla-  
2           nation of the inability to make the identifica-  
3           tion, and

4           “(ii) the name of the hospital or other  
5           health services organization (as defined in sec-  
6           tion 431) for whose benefit the payment was  
7           made.

8           “(2) The amount of the payment.

9           “(3) The name (if known) of any hospital or  
10          other health services organization with which the  
11          physician or practitioner is affiliated or associated.

12          “(4)(A) A statement that describes the acts or  
13          omissions and injuries or illnesses upon which the  
14          action or claim was based, that specifies whether an  
15          action was filed, and if an action was filed, that  
16          specifies whether the action was a class action.

17          “(B) A statement by the physician or practi-  
18          tioner regarding the action or claim, if the physician  
19          or practitioner elects to make such a statement.

20          “(C) If the payment was made without the con-  
21          sent of the physician or practitioner, a statement  
22          specifying such fact and the reasons underlying the  
23          decision to make the payment without such consent.

1           “(5) Such other information as the Secretary  
2           determines is required for appropriate interpretation  
3           of information reported under this section.

4           “(c) CERTAIN REPORTING CRITERIA; NOTICE TO  
5 PRACTITIONERS.—

6           “(1) REPORTING CRITERIA.—In establishing  
7           criteria under section 424(a) for reports under this  
8           section, the Secretary shall establish criteria regard-  
9           ing statements under subsection (b)(4). Such criteria  
10          shall include—

11                   “(A) criteria regarding the length of each  
12                   of the statements,

13                   “(B) criteria regarding the notice required  
14                   by paragraph (2) of this subsection, and

15                   “(C) such other criteria as the Secretary  
16                   determines to be appropriate.

17          “(2) NOTICE OF OPPORTUNITY TO MAKE  
18          STATEMENT.—In the case of an entity that prepares  
19          a report under subsection (a)(1) regarding a pay-  
20          ment and an action or claim, the entity shall notify  
21          any physician or practitioner identified under sub-  
22          section (b)(1)(A) of the opportunity to make a state-  
23          ment under subsection (b)(4)(B). Criteria under  
24          paragraph (1)(B) of this subsection shall include cri-  
25          teria regarding the date by which the reporting en-

1       tity is to provide the notice and the date by which  
 2       the physician or practitioner is to submit the state-  
 3       ment to the entity.”.

4       (b) DEFINITION OF HEALTH SERVICES ORGANIZA-  
 5       TION.—Section 431 of the Health Care Quality Improve-  
 6       ment Act of 1986 (42 U.S.C. 11151) is amended—

7               (1) by redesignating paragraphs (5) through  
 8               (14) as paragraphs (6) through (15), respectively;  
 9               and

10              (2) by inserting after paragraph (4) the follow-  
 11              ing paragraph:

12              “(5) The term ‘health services organization’  
 13              means an entity, that, directly or through contracts,  
 14              provides health services. Such term includes hos-  
 15              pitals; health maintenance organizations and other  
 16              health plans; and health care entities (as defined in  
 17              paragraph (4)).”.

18       (c) CONFORMING AMENDMENTS.—

19              (1) IN GENERAL.—The Health Care Quality  
 20              Improvement Act of 1986 (42 U.S.C. 11101 et seq.)  
 21              is amended—

22                      (A) in section 411(a)(1), in the matter pre-  
 23                      ceding subparagraph (A), by striking “431(9)”  
 24                      and inserting “431(10)”;

(B) in section 421(d) (as redesignated by subsection (a)(2) of this section), by inserting “person or” before “entity”;

(C) in section 422(a)(2)(A), by inserting before the comma at the end the following: “, and (to the extent authorized under title II of the Social Security Act) the social security account number assigned to the physician”; and

(D) in section 423(a)(3)(A), by inserting before the comma at the end the following: “, and (to the extent authorized under title II of the Social Security Act) the social security account number assigned to the physician or practitioner”.

(2) APPLICABILITY OF REQUIREMENTS TO FEDERAL ENTITIES.—

(A) Section 432 of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11152) is amended—

- (i) by striking subsection (b); and
- (ii) by redesignating subsection (c) as subsection (b).

(B) Section 423 of the Health Care Quality Improvement Act of 1986 (42 U.S.C.



1           11133) is amended by adding at the end the  
2           following subsection:

3           “(e) APPLICABILITY TO FEDERAL FACILITIES AND  
4           PHYSICIANS.—

5           “(1) IN GENERAL.—Subsection (a) applies to  
6           Federal health facilities (including hospitals) and ac-  
7           tions by such facilities regarding the competence or  
8           professional conduct of Federal physicians to the  
9           same extent and in the same manner as such sub-  
10          section applies to health care entities and profes-  
11          sional review actions.

12          “(2) RELEVANT BOARD OF MEDICAL EXAMIN-  
13          ERS.—For purposes of paragraph (1), the Board of  
14          Medical Examiners to which a Federal health facility  
15          is to report is the Board of Medical Examiners of  
16          the State within which the facility is located.”.

17                 (C) Section 425 of the Health Care Qual-  
18                 ity Improvement Act of 1986 (42 U.S.C.  
19                 11135) is amended by adding at the end the  
20                 following subsection:

21          “(d) APPLICABILITY TO FEDERAL HOSPITALS.—  
22          This section applies to Federal hospitals to the same ex-  
23          tent and in the same manner as such subsection applies  
24          to other hospitals.”.

1 **SEC. 4. REPORTING OF SANCTIONS TAKEN BY BOARDS OF**  
2 **MEDICAL EXAMINERS.**

3 Section 422(a) of the Health Care Quality Improve-  
4 ment Act of 1986 (42 U.S.C. 11132(a)) is amended—

5 (1) in paragraph (1)(A), by striking “which re-  
6 vokes or suspends” and inserting “which denies, re-  
7 vokes, or suspends”; and

8 (2) in paragraph (2)—

9 (A) in subparagraph (B), by striking “(if  
10 known)” and all that follows and inserting “for  
11 the action described in paragraph (1)(A) that  
12 was taken with respect to the physician or, if  
13 known, for the surrender of the license,”;

14 (B) by redesignating subparagraph (C) as  
15 subparagraph (E); and

16 (C) by inserting after subparagraph (B)  
17 the following subparagraphs:

18 “(C) the medical field of the physician, if  
19 known, including as applicable the medical spe-  
20 cialty,

21 “(D) the date on which the physician was  
22 first licensed in the medical field, and the num-  
23 ber of years the physician has been practicing  
24 in such field, if known, and”.

1 **SEC. 5. REPORTING OF CERTAIN PROFESSIONAL REVIEW**  
2 **ACTIONS TAKEN BY HEALTH CARE ENTITIES.**

3 Section 423(a)(3) of the Health Care Quality Im-  
4 provement Act of 1986 (42 U.S.C. 11133(a)(3)) is amend-  
5 ed—

6 (1) in subparagraph (B), by striking “and”  
7 after “surrender,”;

8 (2) by redesignating subparagraph (C) as sub-  
9 paragraph (E); and

10 (3) by inserting after subparagraph (B) the fol-  
11 lowing subparagraphs:

12 “(C) the medical field of the physician, if  
13 known, including as applicable the medical spe-  
14 cialty,

15 “(D) the date on which the physician was  
16 first licensed in the medical field, and the num-  
17 ber of years the physician has been practicing  
18 in such field, if known, and”.

19 **SEC. 6. FORM OF REPORTING.**

20 Section 424 of the Health Care Quality Improvement  
21 Act of 1986 (42 U.S.C. 11134) is amended by adding at  
22 the end the following subsection:

23 “(d) **ADDITIONAL REQUIREMENTS.**—Not later than  
24 30 days after the effective date for this subsection under  
25 section 11 of the Health Care Quality Improvement Act  
26 Amendments of 1996, the information reported under sec-

1 tions 421, 422(a), and 423(b) shall be available (to per-  
 2 sons and entities authorized in this Act to receive the in-  
 3 formation) in accordance with the following:

4 “(1) The methods of organizing the information  
 5 shall include organizing by medical field (and as ap-  
 6 plicable by medical specialty).

7 “(2) With respect to medical malpractice ac-  
 8 tions reported under section 421(b)(4)(A), the meth-  
 9 ods of organizing shall specify whether the action  
 10 was a class action.”.

11 **SEC. 7. DUTY TO OBTAIN INFORMATION.**

12 Part B of the Health Care Quality Improvement Act  
 13 of 1986 (42 U.S.C. 11131 et seq.) is amended by inserting  
 14 after section 425 the following section:

15 **“SEC. 425A. DUTY OF BOARDS OF MEDICAL EXAMINERS TO**  
 16 **OBTAIN INFORMATION.**

17 “(a) IN GENERAL.—Effective 2 years after the date  
 18 of the enactment of the Health Care Quality Improvement  
 19 Act Amendments of 1996, it is the duty of each Board  
 20 of Medical Examiners to request from the Secretary (or  
 21 the agency designated under section 424(b)) information  
 22 reported under this part concerning a physician—

23 “(1) at the time the physician submits the ini-  
 24 tial application for a physician’s license in the State  
 25 involved, and

1           “(2) at each time the physician submits an ap-  
2           plication to continue in effect the license, subject to  
3           subsection (d).

4   A Board of Medical Examiners may request information  
5   reported under this part concerning a physician at other  
6   times.

7           “(b) FAILURE TO OBTAIN INFORMATION.—With re-  
8   spect to an action for mandamus or other cause of action  
9   against a Board of Medical Examiners, a Board which  
10   does not request information respecting a physician as re-  
11   quired under subsection (a) is presumed to have knowl-  
12   edge of any information reported under this part to the  
13   Secretary with respect to the physician.

14          “(c) RELIANCE ON INFORMATION PROVIDED.—With  
15   respect to a cause of action against a Board of Medical  
16   Examiners, each Board of Medical Examiners may rely  
17   upon information provided to the Board under this title,  
18   unless the Board has knowledge that the information pro-  
19   vided was false.

20          “(d) STATE OPTION REGARDING CONTINUATION OF  
21   LICENSES.—

22               “(1) ESTABLISHMENT OF ELECTRONIC SYSTEM  
23               FOR TRANSMISSION OF DATA.—After consultation  
24               with the States, the Secretary shall establish a sys-  
25               tem for electronically transmitting information under

1       this part to States that elect to install equipment  
 2       necessary for participation in the system. The sys-  
 3       tem shall possess the capability to receive trans-  
 4       missions of data from such States.

5           “(2) STATE OPTION REGARDING ELECTRONIC  
 6       SYSTEM.—With respect to compliance with sub-  
 7       section (a)(2) (relating to applications to continue in  
 8       effect physicians’ licenses), if a State is participating  
 9       in the system under paragraph (1) and provides the  
 10      Board of Medical Examiners of the State with ac-  
 11      cess to the system, the Board may elect, in lieu of  
 12      complying with subsection (a)(2), to comply with  
 13      paragraph (3) of this subsection.

14          “(3) DESCRIPTION OF OPTION.—For purposes  
 15      of paragraph (2), a Board of Medical Examiners is  
 16      complying with this paragraph if—

17           “(A) through the system under paragraph  
 18           (1), the Board annually transmits to the Sec-  
 19           retary (or the agency designated under section  
 20           424(b)) data identifying all individuals who  
 21           hold a valid physician’s license issued by the  
 22           Board, without regard to whether the licenses  
 23           are expiring, and

24           “(B) after receiving from the Secretary (or  
 25           such agency) a list of physicians under para-

1 graph (4)(B), the Board complies with para-  
2 graph (5).

3 “(4) IDENTIFICATION BY SECRETARY OF REL-  
4 EVANT PHYSICIANS.—After receiving data under  
5 paragraph (3)(A) from a Board of Medical Examin-  
6 ers, the Secretary (or the agency designated under  
7 section 424(b)) shall—

8 “(A) from among the physicians identified  
9 through the data, determine which of such phy-  
10 sicians has been the subject of information re-  
11 ported under this part, and the State in which  
12 the incidents involved occurred, and

13 “(B) provide to the Board, through the  
14 system under paragraph (1), a list of the physi-  
15 cians who have been such subjects, which list  
16 specifies for each physician the States in which  
17 the incidents involved occurred.

18 “(5) REQUEST BY STATE OF INFORMATION ON  
19 RELEVANT PHYSICIANS.—For purposes of paragraph  
20 (3)(B), a Board of Medical Examiners of a State is  
21 complying with this paragraph if, after receiving the  
22 list of physicians under paragraph (4)(B), the Board  
23 promptly—

1 (A) identifies which of the physicians has  
 2 had, for purposes of paragraph (4), an incident  
 3 in another State, and

4 (B) requests from the Secretary (or the  
 5 agency) information reported under this part  
 6 concerning each of the physicians so identi-  
 7 fied.”.

8 **SEC. 8. ADDITIONAL PROVISIONS REGARDING ACCESS TO**  
 9 **INFORMATION; MISCELLANEOUS PROVI-**  
 10 **SIONS.**

11 (a) ACCESS TO INFORMATION.—Section 427(a) of the  
 12 Health Care Quality Improvement Act of 1986 (42 U.S.C.  
 13 11137(a)) is amended to read as follows:

14 “(a) ACCESS REGARDING LICENSING, EMPLOYMENT,  
 15 AND CLINICAL PRIVILEGES.—The Secretary (or the agen-  
 16 cy designated under section 424(b)) shall, upon request,  
 17 provide information reported under this part concerning  
 18 a physician or other licensed health care practitioner to—

19 “(1) State licensing boards, and

20 “(2) hospitals and other health services organi-  
 21 zations—

22 “(A) that have entered (or may be enter-  
 23 ing) into an employment or affiliation relation-  
 24 ship with the physician or practitioner, or



1                   “(B) to which the physician or practitioner  
2                   has applied for clinical privileges or appoint-  
3                   ment to the medical staff.”.

4           (b) FEES.—Section 427(b)(4) of the Health Care  
5 Quality Improvement Act of 1986 (42 U.S.C.  
6 11137(b)(4)) is amended to read as follows:

7                   “(4) FEES.—In disclosing information under  
8                   subsection (a) or section 426, the Secretary may im-  
9                   pose fees in amounts reasonably related to the costs  
10                  of carrying out the duties of the Secretary regarding  
11                  the information reported under this part (including  
12                  the functions specified in section 424(b) with respect  
13                  to the information), except that a fee may not be im-  
14                  posed for providing a list under section  
15                  425(A)(d)(4)(B) to any Board of Medical Examin-  
16                  ers. Such fees are available to the Secretary (or, in  
17                  the Secretary’s discretion, to the agency designated  
18                  under section 424(b)) to cover such costs. Such fees  
19                  remain available until expended.”.

20           (c) ADDITIONAL DISCLOSURES OF INFORMATION.—  
21 Section 427 of the Health Care Quality Improvement Act  
22 of 1986 (42 U.S.C. 11137) is amended by adding at the  
23 end the following subsection:

24                   “(e) AVAILABILITY OF INFORMATION TO PUBLIC.—

1           “(1) IN GENERAL.—Not later than 30 days  
2       after the effective date for this subsection under sec-  
3       tion 11 of the Health Care Quality Improvement Act  
4       Amendments of 1996, and every 3 months there-  
5       after, the Secretary shall, except as provided in  
6       paragraph (2), make available to the public all infor-  
7       mation reported under sections 421, 422(a), and  
8       423(b). For such purpose, the information shall be  
9       published as a separate document whose principal  
10      topic is such information, and in addition the infor-  
11      mation shall be made available through the method  
12      described in paragraph (3).

13           “(2) LIMITATIONS.—In the case of a physician  
14      or other licensed health care practitioner with re-  
15      spect to whom one or more incidents have been re-  
16      ported under sections 421, 422(a), and 423(b), the  
17      following applies:

18           “(A) Information may not be made avail-  
19      able under paragraph (1) if, subject to subpara-  
20      graph (B), the aggregate number of discrete in-  
21      cidents reported under such sections is not  
22      more than 2.

23           “(B) A discrete incident reported under  
24      section 421 may not be counted under subpara-  
25      graph (A) if the payment for the medical mal-

1 practice action or claim involved was less than  
2 \$25,000.

3 “(C) If the number of discrete incidents  
4 counted under subparagraph (A) is 3 or more,  
5 the resulting availability of information under  
6 paragraph (1) with respect to such practitioner  
7 shall include information reported on all the  
8 discrete incidents that were so counted. Such  
9 availability may not include information on any  
10 incident not counted by reason of subparagraph  
11 (B).

12 “(D) Of the information reported under  
13 section 421, the following information may not  
14 be made available under paragraph (1) (regard-  
15 less of the number of discrete incidents counted  
16 under subparagraph (A) and regardless of the  
17 amount of the payments involved):

18 “(i) The social security account num-  
19 ber of the physician or practitioner.

20 “(ii) Information disclosing the iden-  
21 tity of any patient involved in the incidents  
22 involved.

23 “(iii) With respect to information that  
24 the Secretary requires under section  
25 421(b)(5) (if any)—

1                   “(I) the home address of the phy-  
2                   sician or practitioner, and

3                   “(II) the number assigned to the  
4                   physician or practitioner by the Drug  
5                   Enforcement Administration.

6                   “(iv) Information not required to be  
7                   reported under such section.

8                   “(3) USE OF INTERNET.—For purposes of  
9                   paragraph (1), the method described in this para-  
10                  graph is to make the information involved available  
11                  to the public through the telecommunications me-  
12                  dium known as the World Wide Web of the Internet.  
13                  The Secretary, acting through the Administrator of  
14                  the Health Resources and Services Administration,  
15                  shall provide for the establishment of a site on such  
16                  medium, and shall update the information main-  
17                  tained through such medium not less frequently than  
18                  once every 3 months.

19                  “(4) DISSEMINATION; FEES.—The Secretary  
20                  shall disseminate each publication under paragraph  
21                  (1) to public libraries without charge. In providing  
22                  the publication to other entities, and in making in-  
23                  formation available under paragraph (3), the Sec-  
24                  retary may impose a fee reasonably related to the  
25                  costs of the Secretary in carrying out this sub-

1 section. Such fees are available to the Secretary (or,  
 2 in the Secretary’s discretion, to the agency des-  
 3 ignated under section 424(b)) to cover such costs.  
 4 Such fees remain available until expended.”.

5 (d) CONFORMING AMENDMENTS.—Section 427 of the  
 6 Health Care Quality Improvement Act of 1986 (42 U.S.C.  
 7 11137) is amended—

8 (1) in subsection (b)(1), in the first sentence,  
 9 by striking “Information reported” and inserting the  
 10 following: “Except for information disclosed under  
 11 subsection (e), information reported”; and

12 (2) in the heading for the section, by striking  
 13 “**MISCELLANEOUS PROVISIONS**” and inserting  
 14 the following: “**ADDITIONAL PROVISIONS RE-**  
 15 **GARDING ACCESS TO INFORMATION; MIS-**  
 16 **CELLANEOUS PROVISIONS**”.

17 **SEC. 9. OTHER MATTERS.**

18 The Health Care Quality Improvement Act of 1986  
 19 (42 U.S.C. 11101 et seq.) is amended—

20 (1) by redesignating part C as part D; and

21 (2) by inserting after part B the following part:

1           **“PART C—OTHER MATTERS REGARDING**  
2           **IMPROVEMENT OF HEALTH CARE QUALITY**  
3   **“SEC. 428. PROHIBITION AGAINST SETTLEMENT WITHOUT**  
4           **CONSENT OF PRACTITIONER.**

5           “(a) PROHIBITION.—With respect to a physician or  
6 other licensed health care practitioner whose acts or omis-  
7 sions are the basis of a medical malpractice action or  
8 claim, an entity may not make a payment described in  
9 section 421(a)(1) without the written consent of the physi-  
10 cian or practitioner, subject to subsection (b).

11          “(b) EXCEPTIONS.—Subsection (a) shall not apply  
12 with respect to a payment by an entity regarding an action  
13 or claim, subject to subsection (c)—

14               “(1) if the payment is made in satisfaction of  
15 a judgment in a court of competent jurisdiction,

16               “(2) if, with respect to the action or claim, the  
17 physician or other licensed health care practitioner  
18 involved enters a process of alternative dispute reso-  
19 lution, and the process has been concluded or any of  
20 the individuals involved has terminated participation  
21 in the process,

22               “(3)(A) the entity delivers directly, or makes a  
23 reasonable effort to deliver through the mail, a writ-  
24 ten notice to the physician or practitioner involved  
25 providing the information specified in subsection (c),  
26 and

1           “(B) a 30-day period elapses, at the conclusion  
2           of which the entity has a reasonable belief that the  
3           physician or practitioner does not object to the pay-  
4           ment.

5           “(c) CRITERIA REGARDING NOTICE.—For purposes  
6           of subsection (b)(3) regarding a written notice to a physi-  
7           cian or practitioner—

8           “(1) the notice shall be considered to have been  
9           delivered if the notice was delivered to the home or  
10          business address of the physician or practitioner,  
11          and to the attorney (if any) representing the physi-  
12          cian or practitioner in the action or claim involved,

13          “(2) the notice shall be considered to have been  
14          delivered directly if the notice was delivered person-  
15          ally by the entity involved or by an agent of the en-  
16          tity,

17          “(3) the entity shall be considered to have made  
18          a reasonable effort to deliver the notice through the  
19          mail if the entity provided the notice through cer-  
20          tified mail, with return receipt requested,

21          “(4) the information specified in this paragraph  
22          for the notice is that the entity intends to make the  
23          payment involved; that the physician or practitioner  
24          has a legal right to prohibit the payment; and that

1       such right expires in 30 days, with a specification of  
2       the date on which the right expires, and

3           “(5) the 30-day period begins on the date on  
4       which the notice is delivered directly to the physician  
5       or practitioner, or on the seventh day after the date  
6       on which the notice is posted, as the case may be.

7       “(d) CIVIL MONEY PENALTY.—Any entity that  
8       makes a payment in violation of subsection (a) shall be  
9       subject to a civil money penalty of not more than \$10,000  
10      for each such payment involved. Such penalty shall be im-  
11      posed and collected in the same manner as civil money  
12      penalties under subsection (a) of section 1128A of the So-  
13      cial Security Act are imposed and collected under that sec-  
14      tion.

15   **“SEC. 429. EMPLOYMENT TERMINATION OF PHYSICIAN.**

16       “(a) REQUIREMENT OF ADEQUATE NOTICE AND  
17      HEARING.—

18           “(1) IN GENERAL.—A health services organiza-  
19      tion may not terminate the employment of a physi-  
20      cian, and may not terminate a contract with a physi-  
21      cian for the provision of health services, unless ade-  
22      quate notice and hearing procedures have been af-  
23      forded the physician involved.

24           “(2) APPLICABILITY.—Section 412(a)(3) ap-  
25      plies in lieu of paragraph (1) in the case of an em-



1       employment termination that is a professional review  
2       action. (With respect to the preceding sentence,  
3       paragraph (1) does apply to an employment termi-  
4       nation that is an action described in subparagraph  
5       (A) of section 431(10) or in the other subpara-  
6       graphs of such section.)

7       “(b) SAFE HARBOR.—

8               “(1) IN GENERAL.—A health services organiza-  
9       tion is deemed to have met the adequate notice and  
10      hearing requirement of subsection (a) with respect  
11      to the employment of, or a contract of, a physician  
12      if the conditions described in paragraphs (2)  
13      through (4) are met (or are waived voluntarily by  
14      the physician).

15             “(2) NOTICE OF PROPOSED ACTION.—Condi-  
16      tions under paragraph (1) are that the physician in-  
17      volved has been given notice stating—

18               “(A)(i) that the health services organiza-  
19      tion proposes to take action to terminate the  
20      employment or contract,

21               “(ii) reasons for the proposed action,

22               “(B)(i) that the physician has the right to  
23      request a hearing on the proposed action,

1           “(ii) any time limit (of not less than 30  
2           days) within which to request such a hearing,  
3           and

4           “(C) a summary of the rights in the hear-  
5           ing under paragraph (4).

6           “(3) NOTICE OF HEARING.—Conditions under  
7           paragraph (1) are that, if a hearing is requested on  
8           a timely basis under paragraph (2)(B), the physician  
9           involved must be given notice stating—

10           “(A) the place, time, and date of the hear-  
11           ing, which date shall not be less than 30 days  
12           after the date of the notice, and

13           “(B) a list of the witnesses (if any) ex-  
14           pected to testify at the hearing on behalf of the  
15           health services organization.

16           “(4) CONDUCT OF HEARING AND NOTICE.—  
17           Conditions under paragraph (1) are that, if a hear-  
18           ing is requested on a timely basis under paragraph  
19           (2)(B)—

20           “(A) subject to subparagraph (B), the  
21           hearing shall be held (as determined by the  
22           health services organization)—

23           “(i) before an arbitrator mutually ac-  
24           ceptable to the physician involved and the  
25           health services organization,

1 “(ii) before a hearing officer who is  
2 appointed by the organization and who is  
3 not in direct economic competition with the  
4 physician, or

5 “(iii) before a panel of individuals who  
6 are appointed by the organization and are  
7 not in direct economic competition with the  
8 physician,

9 “(B) the right to the hearing may be for-  
10 feited if the physician fails, without good cause,  
11 to appear,

12 “(C) in the hearing the physician has the  
13 right—

14 “(i) to representation by an attorney  
15 or other person of the physician’s choice,

16 “(ii) to have a record made of the  
17 proceedings, copies of which may be ob-  
18 tained by the physician upon payment of  
19 any reasonable charges associated with the  
20 preparation thereof,

21 “(iii) to call, examine, and cross-ex-  
22 amine witnesses,

23 “(iv) to present evidence determined  
24 to be relevant by the hearing officer, re-

1                   gardless of its admissibility in a court of  
2                   law, and

3                   “(v) to submit a written statement at  
4                   the close of the hearing, and

5                   “(D) upon completion of the hearing, the  
6                   physician has the right—

7                   “(i) to receive the written rec-  
8                   ommendation of the arbitrator, officer, or  
9                   panel, including a statement of the basis  
10                  for the recommendations, and

11                  “(ii) to receive a written decision of  
12                  the health services organization, including  
13                  a statement of the basis for the decision.

14                  “(c) RULE OF CONSTRUCTION.—A health services or-  
15                  ganization’s failure to meet the conditions described in  
16                  paragraphs (2) through (4) of subsection (b) shall not, in  
17                  itself, constitute failure to meet the standards of sub-  
18                  section (a).”.

19       **SEC. 10. DEFINITIONS.**

20                  Section 431(6) of the Health Care Quality Improve-  
21                  ment Act of 1986, as redesignated by section 3(b)(1) of  
22                  this Act, is amended by inserting before the period the  
23                  following: “(except that such term means an institution  
24                  described in such paragraph (1) (without regard to such  
25                  paragraph (7)) if, under applicable State or local law, the

1 institution is permitted to operate without being licensed  
 2 or otherwise approved as a hospital”.

3 **SEC. 11. EFFECTIVE DATES.**

4 (a) INCORPORATION OF TEXT OF AMENDMENTS.—  
 5 The amendments described in this Act are made upon the  
 6 date of the enactment of this Act.

7 (b) SUBSTANTIVE EFFECT.—Except as provided in  
 8 subsection (c)(1) and subsection (d), and except as other-  
 9 wise provided in this Act—

10 (1) the amendments made by this Act take ef-  
 11 fect upon the expiration of the 1-year period begin-  
 12 ning on the date of the enactment of this Act; and

13 (2) prior to the expiration of such period, the  
 14 Health Care Quality Improvement Act of 1986, as  
 15 in effect on the day before such date of enactment,  
 16 continues in effect.

17 (c) REGULATIONS.—

18 (1) IN GENERAL.—With respect to the amend-  
 19 ments made by this Act, the Secretary of Health  
 20 and Human Services may issue regulations pursuant  
 21 to such amendments before the expiration of the pe-  
 22 riod specified in subsection (b)(1), and may other-  
 23 wise take appropriate action before the expiration of  
 24 such period to prepare for the responsibilities of the  
 25 Secretary pursuant to the amendments.

1           (2) ABSENCE OF FINAL RULE.—The final rule  
2       for purposes of paragraph (1) may not take effect  
3       before the expiration of the period specified in sub-  
4       section (b)(1), and the absence of such a rule upon  
5       such expiration does not affect the provisions of sub-  
6       section (b).

7           (d) TRANSITIONAL PROVISIONS REGARDING MAL-  
8       PRACTICE PAYMENTS BY PERSONS.—With respect to the  
9       reporting of information under section 421 of the Health  
10      Care Quality Improvement Act of 1986, the following ap-  
11      plies:

12           (1) The requirement of reporting by persons  
13      under section 421(a)(1) of such Act (as amended by  
14      section 3(a) of this Act) takes effect 180 days after  
15      the date of the enactment of this Act.

16           (2) The requirement of reporting by persons  
17      applies to payments under such section 421(a)(1)  
18      made before, on, or after such date of enactment.

19           (3)(A) The information received by the Sec-  
20      retary of Health and Human Services on or before  
21      August 27, 1993, pursuant to regulations requiring  
22      reports from persons (in addition to reports from en-  
23      tities) shall be maintained in the same manner as  
24      the information was maintained prior to such date,  
25      and shall be available in accordance with the regula-

1        tions in effect under such Act prior to such date  
2        (which regulations remain in effect unless a provi-  
3        sion of this Act takes effect pursuant to this section  
4        and requires otherwise).

5                (B) Subparagraph (A) takes effect on the date  
6        of the enactment of this Act.

○